





# THE DAILY NEWS.

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SUNDAY, SEPTEMBER 7, 1873.

THE Butler stock is up in Massachusetts. — *Washington Republican*.  
Yes, because the decency and honesty stock is below par in Massachusetts.

We can only account for the sympathy of the *Washington Republican* for BEN BUTLER, on the presumption that a Beastly feeling makes it wondrous kind.

It is proper that the Louisville *Courier-Journal's* opinions be considered the chief judicial authority in America newspaperdom, because of the initials "C. J.," frequently appended to the quotations taken from it.

In Kentucky, when any one so far forgets himself, and falsifies history, as to deny that Daniel Boone discovered America, a bystander corrects the offender by chewing his ear off.

That is not fair. Every honest man is entitled to a full hearing.

BECAUSE THE RALEIGH NEWS advocates for every person the right of trial by jury and opposes Military Commissions in times of peace, the *Washington Republican* says we are "not in thorough accord with the spirit of the times." No; nor with the spirit of Butlerian either—of which the *Republican* is a conspicuous advocate.

OUR temperance friends will be glad to hear JOHN G. Saxe's last. It will do to quote. It was recently sent in a letter to a friend and is as follows:

"You have heard of 'the snake in the grass,' my boy?  
Of the terrible snake in the grass:  
But you must know,  
That a snake is a different class,  
'Tis the venomous snake in the grass!"

THE New York *Herald* thinks that BEN BUTLER, in working so ardently for the "insignificant post of Governor of Massachusetts," is making "a strategic movement for the Presidential succession, and hence the great excitement in Massachusetts."

The *Herald* may be right; but many decent people would vastly prefer GRANT for the third term to BUTLER for the first.

THE Asheville *Citizen* and *Expositor* publish a card from Lieut. MAST and Deputy Marshal DEWEY, with certificates from other individuals, correcting the accounts which have been published in regard to the outrages alleged to have been committed in McDowell county, by the Revenue officers. As we have published the charges against MAST and DEWEY, we will publish their reply in our next.

THE Greensboro *Patriot* says truly, that "because Jeff. Davis happened to have been the President of the conspiracy, he must be denied saying what he believes, though his convictions be based on the experience of mankind and the truth of history."

Whenever Mr. Davis opens his lips he stirs up the whole Yankee nation, like throwing a stick in a wasp's nest.

DE mortuis nil nisi bonum, has been changed by the New York *Tribune* to *de mortuis nil nisi bona*, in reference to the suit for damages in a breach of promise case, where the male defendant died and the wronged female plaintiff continues her suit against the administrator, with the hope of making the goods and chattels of the intestate chargeable for her claim.

This is a good pun which lawyers will appreciate, if nobody else does.

"IGNORANT spleen" is what the *Republican* calls the demand of the RALEIGH NEWS for a fair and impartial trial for the humblest as well as the highest in the land, when charged with crime.

The Constitution of the United States, article third, section second, provides that "the trial of all crimes, except in cases of impeachment, shall be by jury." If the *Republican* will study more carefully the organic law of the nation, its own ignorance might be less apparent.

SUPERVISOR P. W. PERRY, of the Carolinas, via Maine, in his report to the Revenue Bureau at Washington City, goes out of his way to attack the Conservative press of the State, by charging it with encouraging lawlessness and violations of the Revenue law.

We believe we exchange with every Conservative paper in the State, and we can without hesitation pronounce the Supervisor's statement maliciously false and slanderous.

We shall have something more to say of his uncalled for calumination hereafter.

## Judge Rodman Excoriated.

It will be remembered by the readers of the Raleigh News that Judge RODMAN, of our Supreme Court, published a letter in our columns in regard to the amendment abolishing the Code Commission, in which he administered some hard blows to the Legislature of 1871-72. We surrender a portion of our editorial space to the following answer to his Honor, from which it will be seen that the Judge has been hoisted with his own petard, i. e. his C. C. P. — EDITORS DAILY NEWS.

Having recently read a letter from Ex-Commissioner Rodman in your issue of July 23d, I desire to make some comments upon it, and to take the necessary space in your paper for the purpose.

The Ex-Commissioner has gone out of his way to sneer at the Legislature of 1871-72, as well as at that recently adjourned. He thinks the members of these "two successive Assemblies of the prime intelligence of North Carolina," and suggests that "they did not read the Constitution before voting to alter it."

Indeed the Ex-Commissioner seems to entertain such a poor opinion of these two Conservative Assemblies that I am inclined to believe he has been keeping company with some of our dyspeptic party friends who affect to see nothing in the action of our Conservative Legislatures of 1868-70, and this I, by no means admit, yet they were more honest; and, further, that they employed whatever intelligence they possessed in advancing the interests of the State, and not in destroying her credit and distressing her people; and, finally, that they were not in any way, or for any purpose, striving to promote the prosperity of our citizens, and not as political bums, licensed by the countenance of a partisan government, to seize our property and despoil us under the loyal plea of "the public interest."

Radical of that time was no Rudolf; a man noted now among other things, for having been called to a chair at Chapel Hill, and for having been deservedly hanged for horsebreaking and murder. Well might the members of the "two successive Assemblies of prime intelligence" pray to be excused from patronizing a school in which Rudolf's peculiar intelligence might be imparted to the scholars.

The Ex-Commissioner consciously observed, "Verily, we need common schools for others than our own children." Yes, verily, the Ex-Commissioner's approach to be quite correct. Perhaps if his children's father should attend a common school with regularity, he would learn how to parse the word or, after Assembly, in the following sentence, found in his letter: "I think I may be allowed to specify some of the Acts of Assembly or which that Commission may claim the credit of framing," and, perhaps, he would also learn that a word is the objective case cannot be nominative to a verb." See Smith's, *McLwaine*—p. 95, 63 N. C. Reports.

People who live in glass houses should be careful how they throw stones. The Ex-Commissioner praises himself as a model for the manner in which he discharged the duties of his office, and modestly announces to his admiring countrymen that "his productions are on a par with the *Codes of Justinian*—of *Napoleon*—and of *Livington*, which have made their respective authors famous."

Long live Justinian, Rodman Napoleon! famous as reputed authors of Pandects, Codes and those kinds of things. Blessed be Tony! However, with deference, I propose to examine his performance in transcribing the Code of Civil Procedure.

About nine hundred and ninety-nine out of every thousand sentences in that precious Code are copied without alteration from the New York C. C. P., and wherever new matter has been incorporated into the text by our North Carolina Commissioners, they have generally made a horrid blotch of it—vide sections 3 and 4, page 1, in construing which the Supreme Court said, "supply a non-inducement to the verb, this corrects the grammatical error and makes sense"; also, the provisions of C. C. P., touching the probate of deeds made by *deceased* before Commissioners of affidavits, etc. In recklessly copying the entire New York Code, without judgment and without prudence, the Ex-Commissioner bungled intolerably, and made his original production, which otherwise might have been well received by the profession, odious and contemptible in its sight.

The Commissioners so thoroughly muddled the subject of Special Proceedings, as to mislead the profession entirely; and then in purpose to turn a very simple matter into a great and unfathomable mystery, they can certainly congratulate themselves on the accomplishment of their design.

So likewise they came near realizing the pleasant notion of success in their endeavor to bewilder the profession as to the competency of parties to actions to testify in their own behalf.

Sections 342 and 343 provide that "no person offered as a witness shall be excused by reason of his interest in the event of the action, and a party to an action may be examined as a witness on his own behalf—or on behalf of any other party (except as to certain transactions had with a deceased person). In the same manner as any other witness."

These provisions seem to put parties on the same footing as other persons. But if that is so, what in the name of the Code Commission, do sections 338, 339 and 340 mean? Why were they introduced into the New York C. C. P.? What purpose do they serve? Apparently, they impose restrictions on the examination of parties on their own behalf; while section 343 abolishes all the restrictions they impose.

Section 338 provides that if B, a party to an action, is examined by C, the adverse party, then B may be examined on his own behalf; but if he should testify to any new matter not necessary to explain his answers to the questions asked him by C, then that C may testify about such new matter also.

Whereas section 243 permits both B and C to testify as other witnesses, without any *ifs, or ands, or buts* about it.

York Code, not of Commissioner Rodman's original (C. C. P.), one of several hundreds of defendants who are joint contractors, is examined by the adverse party, then the other of such plaintiffs or defendants may offer himself as a witness as to the same matter."

It also provides "a party may be examined in behalf of a co-plaintiff or co-defendant as to any matter in which he is not jointly interested with the party calling him as a witness, but the examination thus taken shall not be used in the behalf of the party called."

Now, whatarrant nonsense is all this, when by section 343 "a party may be examined on his own behalf or on behalf of any other party, just like any other witness, (saving the exception mentioned above)."

Why did the Ex-Commissioner attempt to mystify this subject, and to perplex the profession by copying these inconsistent provisions into his little C. C. P.?

These illustrations are sufficient to show that the Ex-Commissioner is not entitled to much credit for his performance; and I will not go into other details, as to do so would require more space than I would be willing to give me. However, I cannot refrain from saying one word more about the C. C. P. One of the chief features of the *system*, *practiced* by its adoption, shown by experience to be ill-suited to the wants and situation of the people of this State, that the Legislature hastened to rectify the error it committed in adopting the Commissioner Rodman's views on the subject.

An Act was speedily passed to suspend the C. C. P. in certain cases, and later, "a Legislature of prime intelligence" continued the suspension indefinitely; and all men, *but the Commissioner*, *perpetrated* the mistake; *but perhaps the Commissioner* has but little "prime intelligence" concerning "the business usages of our people—and their facilities for mutual intercourse."

The Ex-Commissioner glorifies himself also on his adoption of various bills afterwards passed by the General Assembly; many of which are, like the other C. C. P. mere transcripts from other State books—principally from the codes of New York.

Some of these Acts contain wise and wholesome provisions, while others have been repealed or modified as they were found to be unsuited to our practice "and the business usages of our people." They are too numerous for me to refer to them otherwise than generally.

In exception of one which I desire to comment upon with a little particularity. I mean chap. 186, Acts of 1872, relating to *Marriages* and the *Contracts of Married Women*.

Under our old system, the wife's real estate was in her husband's sole and separate property, and he could make no contracts to encumber or to bind it at law; while her personal property, passed by marriage absolutely to the husband.

The Constitution of 1868 provides that the *personal and real estate of a wife shall be and remain her sole and separate property*, and shall not be liable in any way for her husband's contracts.

This was a provision of additional protection for the wife in the enjoyment of her property; by it, her estate was to remain her sole property. Because of the provisions of the new Constitution, some legislation was necessary on the subject, and the Act above mentioned, said to have been prepared by Judge Rodman, passed on the eve of adjournment in 1872, and passed in my judgment, without due consideration.

This Act is in absolute antagonism to the spirit of the constitutional provision above mentioned, inasmuch as it takes away from the wife her sole and separate property, and shall not be liable in any way for her husband's contracts.

This seems to me to be a very objectionable innovation in our law; one that was unnecessary and, so far from being sanctioned by the change in the Constitution, in direct conflict with its spirit. If it should remain unrevoked, it is likely to be fraught with the most evil consequences—as it removes every practical barrier to the power of an unscrupulous and profligate husband to utterly dispossess the property of a tender and sympathetic wife, and renders it easy for a man of a hopeful and sanguine disposition to engulf his wife's separate estate in the ruin of his own fortunes.

The Ex-Commissioner may have read the Constitution; but if so, he has read it to little purpose, if he is not aware that his Marriage Act circumvents and renders nugatory the plain intent of that instrument.

One word more: the Ex-Commissioner flatters himself on the honor done him by the Legislature in enacting into laws the fruits of his labor.

The Legislature of 70-72 did not in any instance, that I am aware of, pass any bill reported to it by any person as a Code Commissioner. Some bills drawn by Judge Rodman were doubtless passed, but none bearing the imprimatur of the Code Commission. In fact the House of Representatives declined to have any intercourse with the Commissioners. In explanation of this, I should state that some of the members of the former House declared their belief that a bill had been passed at the previous session abolishing the Commission, and as it could not be found, an impression prevailed that the bill had been abstracted from the Enrolled Bills.

This was doubtless an error, but because of the impression, the House, according to my recollection, positively refused to receive any communication from any Code Commissioner.

## VOTE ON THE CONSTITUTIONAL AMENDMENTS.

The following is the official vote on the Constitutional Amendments, which were submitted to the people for ratification or rejection, on the seventh day of August, 1873. For convenience, we have classified the amendments by numbers as follows: I, Amendment to the Public Debt; II, in relation to Superintendent of Public Works; III, State Census; IV, Exemption from Taxation; V, the University; VI, Sessions of the General Assembly; VII, Code Commission; VIII, Federal Office-holders.

| COUNTIES.    | Pub. D. | S. P. W. | III. | IV.  | V.   | S. G. A. | VI.  | VII. | VIII.  |
|--------------|---------|----------|------|------|------|----------|------|------|--------|
| For.         | Ag.     | For.     | Ag.  | For. | Ag.  | For.     | Ag.  | For. | Ag.    |
| Albemarle    | 875     | 121      | 808  | 221  | 808  | 221      | 808  | 221  | 808    |
| Alexander    | 425     | 4        | 402  | 32   | 431  | 4        | 421  | 4    | 421    |
| Alleghany    | 211     | 16       | 227  | 9    | 235  | 9        | 235  | 9    | 235    |
| Ames         | 249     | 108      | 357  | 31   | 388  | 31       | 388  | 31   | 388    |
| Anson        | 806     | 125      | 931  | 107  | 1038 | 107      | 1038 | 107  | 1038   |
| Ashe         | 594     | 392      | 986  | 384  | 1370 | 384      | 1370 | 384  | 1370   |
| Beaufort     | 249     | 702      | 951  | 180  | 1131 | 180      | 1131 | 180  | 1131   |
| Beaverdam    | 708     | 309      | 1017 | 728  | 1745 | 728      | 1745 | 728  | 1745   |
| Bladen       | 311     | 172      | 483  | 108  | 591  | 108      | 591  | 108  | 591    |
| Brunswick    | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Burke        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Cabarrus     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Caldwell     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Camden       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Carteret     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Catawba      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Chatham      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Cherokee     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Chowan       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Cleveland    | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Columbus     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Crawford     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Curry        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Dalton       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Davie        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Duplin       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Edgecombe    | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Farmington   | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Franklin     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Gaston       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Graham       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Granville    | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Guilford     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Halifax      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Henderson    | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Hertford     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Hyde         | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Jackson      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Johnson      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Lincoln      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Macon        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Martin       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Mecklenburg  | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Mitchell     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Montgomery   | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Moore        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Nash         | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| New Hanover  | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Northampton  | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Onslow       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Orange       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Pamlico      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Pasquotank   | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Perquimans   | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Person       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Pitt         | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Polk         | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Randolph     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Richmond     | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Robeson      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Rockingham   | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Rowan        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Rutherford   | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Sampson      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Shelby       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Stokes       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Swain        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Transylvania | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Union        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Wake         | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Washington   | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Watauga      | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Wayne        | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486   |
| Wilkes       | 891     | 228      | 1119 | 367  | 1486 | 367      | 1486 | 367  | 1486</ |







